PART IV

Section—I-A

CENTRAL BILLS AND REPORTS OF SELECT COMITTEES THEREON

NOTIFICATION.

(DEPARTMENT OF LAW AND PARLIAMENTARY AFFAIRS)

No. LAW 46 LOA 67, dated Bangalore, 29th September 1967.

Ordered that the Monopolistic and Restrictive Trade Practices Bill, 1967 (Bill No. XV of 1967), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 18th August 1967, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

H. K. ANANTHASUBBA RAO,

13 *Under Secretary to Govt.,*
Dept. of Law and Parliamentary Affairs.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 18th August, 1967 :—

BILL NO. XV OF 1967.

A Bill to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Eighteenth Year of the Republic of India as follows :—

CHAPTER I.

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Monopolistic and Restrictive Trade Practices Act, 1967.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "agreement" includes any arrangement or understanding, whether or not it is intended that such agreement, shall be enforceable (apart from any provision of this Act) by legal proceedings ;

(*b*) "Commission" means the monopolies and Restrictive Trade Practices Commission established under section 5 ;

(*c*) "Director" means the Director of Investigations appointed under section 8 ;

(*d*) "dominant undertaking" means an undertaking which, either by itself or along with inter-connected undertakings,

(*i*) produces, supplies, distributes or otherwise controls not less than one-third of the total goods of any description that are produced, supplied or distributed in India or any part thereof,

(*ii*) provides or otherwise controls not less than one-third of any services in India or any part thereof.

Explanation I.– Where not less than one-third of the production, supply, distribution or control of any goods or the provision or control of any services is shared by inter-connected undertakings, each such undertaking shall be deemed, for the purposes of this Act, to be a dominant undertaking.

Explanation II.—Where goods of any description are the subject of different forms of production, supply, distribution or control, every reference in this Act to such goods shall be construed as reference to any of those forms of production, supply, distribution or control, whether taken separately or together or in such groups as the Central Government may think fit.

Explanation III.—For the purpose of determining whether any undertaking is producing supplying, distributing or controlling one-third of any goods or providing or controlling one-third of any services, the Central Government may take one or more of the following criteria into consideration, namely, the value, cost, price, quality or capacity, of the goods or services, or the number of workers employed for the production, supply, distribution or control of such goods or for the rendering of such services or any other criterion of such nature as that Government may think fit;

(*e*) "goods" includes goods imported into India;

(*f*) "India" means the territories to which this Act extends;

(*g*) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other as follows, namely :—

(*i*) where one undertaking is owned by a firm and the other is owned by an individual, if such individual is a partner of such firm;

(*ii*) where the undertakings are owned by firms, if such firms have one or more common partners,

(*iii*) where one undertaking is owned by a Hindu undivided family and the other is owned by a

firm, if any member of such Hindu undivided family is a partner of such firm,

(*iv*) where one undertaking is owned by a Hindu undivided family and the other is owned by a body corporate,if any member of such Hindu undivided, namely—

(*a*) holds, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity of the body corporate, or

(*b*) exercises control, directly or indirectly, whether as director or otherwise over the body corporate,

(*v*) where one undertaking is owned by body corporate and the other is owned by a firm, if any partner of the firm,—

(*a*) holds directly not less than fifty per cent of the shares whether prefernce or equity of the body corporate, or

(*b*) exercises control directly or indirectly whether as director or otherwise over the body corporate,

(*vi*) where one undertaking is owned by a body corporate and the other is owned by a firm, if any partner of the firm is a body corporate under the same managment within the meaning of section 370 of the Companies Act, 1956, (1 of 1956.)

(*vii*) whether the undertakings are owned by bodies corporate,—

(*a*) if one owns or manages the other, or

(*b*) if one is a subsidiary of the other, or

(*c*) if they are under the same management within the meaning of said section 370, or

(*d*) if one exercises control over the other in any other manner;

(*h*) "member" means a member of the Commission;

(*i*) "monopolistic trade practice" means a practice which has, or is likely to have the effect of,—

(i) maintaining prices at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of any goods of any description or the supply of any services or in any other manner,

(ii) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services, whether by the adoption of any practice or by pursuing any commercial policy or by any act or omission,

(iii) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed in India to deteriorate;

(*j*) "monopolistic undertaking," means—

(i) a dominant undertaking, or

(ii) an undertaking which, together with one or more independent undertaking, produces, supplies distributes or otherwise controls not less than one-half of the goods of any description that are produced, supplied or distributed in India, or provides not less than one-half of any services that are rendered in India, and indulges in any monopolistic trade practice, whether such practice, is indulged in by itself or by any independent undertaking herein before referred to;

(*k*) " prescribed means prescribed by rules made under this Act;

(*l* 'price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing ;

(*m*) "register" means the register kept by the Registrar under section 35 ;

(*n*) "Registrar" means the Registrar of Restrictive Trade Agreements, appointed under section 33, and includes every Additional, Joint, Deputy or Assistant Registrar appointed under that section ;

(*o*) "restrictive trade practice" means a trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner and in particular,–

(i) which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions ;

(*p*) "retailer", in relation to the sale of any goods, includes every person other than a wholesaler, who sells the goods to any other person ; and in respect of the sale of goods by a wholesaler to any person for any purpose other than re-sale, includes that wholesaler ;

(*q*) "scheme of finance" means a scheme indicating the sources from which and the terms and conditions on which finances are proposed to be obtained by an undertaking ;

(*r*) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking insurance, transport, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying

of news or other information, but does not includes the rendering of any service free of charge or under a contract of personal service;

(*s*) "trade" means any trade, business, industry, profession, occupation relating to the production supply; distribution or control of goods and includes the provision of any services;

(*t*) "trade association" means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members;

(*u*) "trade practice" means any practice relating to the carrying on of any trade, and includes—

(*i*) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,

(*ii*) a single or isolated action of any person in relation to any trade;

(*v*) "undertaking" means an undertaking which is owned by—

(*i*) an individul, or

(*ii*) a Hindu undivided family, or

(*iii*) a body corporate, or

(*iv*) a firm, or

(*v*) an association of persons or a body of individuals whether incorporated or not, or

(*vi*) a trust, whether public or private, or whether religious or charitable,

and which is engaged in the production, supply, distribution or control of goods of any description or the provision of service of any kind;

(*w*) "value of assets", in relation to an undertaking; means the value of its assets as shown in its books of account after making provision for depreciation or for renewals, or diminution in value;

(*x*) "wholesaler", in relation to the sale of any goods, means a person who sells the goods to any person for the purpose of resale ;

(*y*) words and expressions used but not defined in this Act and distined in the Companies Act, 1956, (1 of 1956) have the meanings respectively assigned to them in that Act.

3. Act not to apply in certain cases.—Unless the Central Government, by notification in the Official Gazette, otherwise directs, this Act shall not apply to—

(*a*) any undertaking owned or controlled by a Government company,

(*b*) any undertaking owned or controlled by the Government,

(*c*) any corporation established by or under any Central, Provincial or State Act,

(*d*) any trade union or other association of workmen or employees formed for their own reasonable protection as such workmen or employees,

(*e*) any undertaking engaged in an industry, the control of which has been taken over by any person or body of persons in pursuance of any authorisation made by the Central Government under any law for the time being in force.

4. Application of other laws not barred.—Save as expressly provided in this Act, the provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force.

CHAPTER II

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

5. Establishment and constitution of the Commission.—

(*1*) For the purposes of this Act, the Central Government shall establish, by notification in Official Gazette, a

commission to be known as the Monopolies and Restrictive Trade Practices Commission which shall consist of a Chairman and not less than two and not more than eight other members, to be appointed by the Central Government.

(2) The Chairman of the Commission shall be a person who is, or has been or is qualified to be, a Judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of or have shown capacity in dealing with, problems relating to economics, law, commerce, industry, public affairs or administration.

(3) Before appointing any person as the member of the Commission, the Central Government shall satisfy itself that the person does not, and will not, have, any such financial or other interest as it is likely to affect prejudicially his functions as such member.

6. Conditions of service of members.—(1) Every member shall hold office for such period, not exceeding five years, as may be specified by the Central Government in the notification made under sub-section (1) of Section 5, but shall be eligible for re-appointment.

(2) Notwithstanding anything contained in sub-section (1) a member may—

(*a*) by writing in his hand and addressed to the Central Government resign his office at any time;

(*b*) be removed from his office in accordance with the provisions of Section 7

(3) A casual vacancy caused by the resignation or removal of the Chairman or any other member of the Commission under sub-section (2) or otherwise shall be filled by fresh appointment.

(4) No act or proceeding of the Commission shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

(5) The Chairman and other members of the Commission shall receive such remuneration and other allowances and shall be governed by such conditions of service as the Central Government may determine:

Provided that the remuneration of the Chairman or any other member shall not be varied to his disadvantage after his appointment.

(6) In the case of a difference of opinon among the members of the Commission, the opinion of the majority shall prevail and the opinion or orders of the Commission shall be expressed in terms of the views of the majority.

(7) Any member ceasing to hold office as such shall not hold any appointment in, or be connected with the management or administration of, any industry or undertaking for a period of five years from the date on which he ceases to hold such office.

7. Removal of members from office in certain circumstances.—(1) The Central Government may remove from office any member, who—

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1) no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference

being made to it in this behalf by the Central Government, has, on an inquiry held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought on such grounds to be removed.

8. Staff of the Commission.—The Central Government may appoint a Director of Investigation for making investigations for the purposes of this Act and may, in addition, make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of the Director or any member of the staff of the Commission shall not be varied to his disadvantage after his appointment.

9. Salaries, etc., to be defrayed out of the Consolidated Fund of India.—The salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pensions, payable to or in respect of officers and other employees of the Commission, shall be defrayed out of the Consolidated Fund of India.

JURISDICTION, POWERS AND PROCEDURE OF THE COMMISSION

10. Inquiry into monopolistic or restrictive trade practices by commission.—The Commission may inquire into—

(*a*) any restrictive trade practice—

(i) upon receiving a complaint of facts which constitute such practice from any trade or consumers' association or from any seven or more consumers, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon application made to it by the Registrar or the Director;

(*b*) any monopolistic trade practice, upon a reference made to it by the Central Government.

11. Investigation by Director before issue of process in certain cases.—In respect of any restrictive trade practice of which complaint is made under clause (*a*) of section 10, the Commission shall, before issuing any process requiring the attendance of the person complained against, cause a preliminary investigation to be made by the Director, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be inquired into.

12. Powers of the Commission.—(1) The Commission shall, for the purposes of any inquiry under this Act have the same powers as are vested in a civil court, under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely :—

(*a*) the summoning and enforcing the attendance of any witness and examining him on oath ;

(*b*) the discovery and production of any document or other material object producible as evidence ;

(*c*) the reception of evidence on affidavits ;

(*d*) the requisitioning of any public record from any court or office ;

(*e*) the issuing of any commission for the examination of witnesses.

(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) The Commission shall have power to require any person—

(*a*) to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other

documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act ; and

(*b*) to furnish to an officer so specified such information as respects the trade practice as may be required for the purposes of this Act or such other information as may be in his possession or in relation to the trade carried on by any other person:

(4) For the purpose of enforcing the attendance of witnesses the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

13. Orders of Commission may be subject to conditions, etc.—(1) In making any order under this Act, the Commission may make such provisions not inconsistent with this Act, as it may think necessary or desirable for the proper execution of the order and any person who commits a breach of or fails to comply with any obligation imposed on him by any such provision shall be deemed to be guilty of an offence under this Act.

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made.

(3) An order made by the Commission may be general in its application or may be limited to any particular class of traders or a particular class of trade practices or to a particular trade practice or to a particular locality.

14. Orders where party concerned does not carry business in India.—Where any practice substantially falls within monopolistic or restrictive trade practice, or both, relating to the production, supply, distribution or control of goods of any description or the provision of any services and

any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practice which is carried on in India.

15. Restriction of application of orders in certain cases.—No order made under this Act with respect to any monopolistic or restrictive trade practice shall operate so as to restrict—

(*a*) the right of any person to restrain any infringement of a patent granted in India, or

(*b*) any person as to the condition which he attaches to a licence to do anything, the doing of which but for the licence would be an infringement of a patent granted in India, or

(*c*) the right of any person to export goods from India, to the extent to which the monopolistic or restrictive trade practice relates exclusively to the production, supply, distribution or control of goods for such export.

16. Sittings of the Commission.—(1) The central office of the Commission shall be in Delhi but the Commission may sit at such places in India and at such times as may be most convenient for the exercise of its powers or functions under this Act.

(2) The powers or functions of the Commission may be exercised or discharged by Benches formed by the Chairman from among the members.

17. Hearing to be in public except in special circumstances.—(1) Subject to the provisions of sub-section (2), the hearing of proceedings before the Commission shall be in public.

(2) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any offence or matter or for any other reason, the Commission may—

(*a*) hear the proceeding or any part thereof in private;

(*b*) give directions as to the persons who may be present thereat;

(*c*) prohibit or restrict the publication of evidence given before the Commission (whether in public or in private) or of matters contained in documents filed before the Commission.

18. Procedure of the Commission.—(1) Subject to the provisions of this Act, the Commission shall have power to regulate—

(*a*) the procedure and conduct of its business;

(*b*) the formation and the procedure of Benches of the Commission;

(*c*) the delegation to one or more members of the Commission of such powers or functions as the Commission may specify.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the powers of the Commission shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it are allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceeding.

19. Proceedings of the Commission to be conducted with expedition.—The Commission shall have its proceedings conducted with as little formality and technicality and with such expedition as the requirements of this Act and a proper consideration of the matters before the Commission may permit.

20. Orders of the Commission to be noted in the register.—The Commission shall cause an authenticated copy of every order made by it in respect of a restrictive trade

practice to be forwarded to the Registrar who shall have it recorded in such manner as may be prescribed.

CHAPTER III

CONCENTRATION OF ECONOMIC POWER

Part A

21. Undertakings to which this Part applies.—This Part shall apply to—

(*a*) an undertaking if the total value of—

(*i*) its own assets, or

(*ii*) its own assets together with the assets of its interconnected undertakings, or

(*iii*) its own assets together with the assets of its interconnected undertakings and the assets of every other undertaking if such other undertaking and one or more of the inter-connected undertakings aforesaid are inter-connected undertakings,

is not less than twenty crores of rupees.

(*b*) a dominant undertaking—

(*i*) where it is a single undertaking, the value of its assets ; or

(*ii*) where it consists of more than one undertaking, the sum-total of the value of the assets of all the inter-connnected undertakings constituting the dominant undertaking,

is not less than one crore of rupees.

22. Expansion of undertakings.—(1) Subject to the provisions of section 24, where an undertaking to which this Part applies proposes to substantially expand its activities by the issue of fresh capital or by the installation of new machinery or other equipment or in any other manner, it shall, before taking any action to give effect to

the proposal for such expansion, give to the Central Government notice, in the prescribed form, of its intention to make such expansion, stating therein whether it is connected with any other undertaking or undertakings and if so, giving particulars relating to all the inter-connected undertakings and the scheme of finance with regard to the proposed expansion and such other information as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no undertaking shall give effect to any proposal for its expansion unless such proposal has been approved by the Central Government.

Explanation.—For the purpose of this section, an undertaking shall be deemed to expand substantially if, after such expansion,—

(*a*) in the case of an undertaking to which clause (*a*) of section 21 applies,—

(*i*) the value of the assets referred to in the said clause, before the expansion, would result in an increase by not less than twenty-five per cent of such value, or

(*ii*) the production, supply or distribution of any goods or the provision of any services by the undertaking or undertakings referred to in the said clause, before the expansion, would result in an increase by not less than twenty-five per cent. of its production, supply or distribution of goods or the provision of services by it;

(*b*) in the case of an undertaking to which clause (*b*) of section 21 applies, the production, supply, distribution or control of any goods or the provision by it of any services would result in an increase by not less than twenty-five per cent of the value of its production, supply, distribution or control of goods or the provision of services by it before the expansion.

(3) (*a*) The Central Government may call upon the undertaking concerned to satisfy it that the proposed expansion or the scheme of finance with regard to such

expansion is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and thereupon the Central Government may, if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal for such expansion.

(*b*) If the Central Government is of opinion that no such order as is referred to in clause (*a*) can be made without a further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(*c*) Upon receipt of the report of the Commission, the Central Government may pass such orders with regard to the proposal for the expansion of the undertaking as it may think fit.

(*d*) No scheme of any expansion approved by the Central Government and no scheme of finance with regard to such expansion shall be modified except with the previous approval of the Central Government.

(4) Nothing in this section shall apply to any industrial undertaking (which is not a dominant undertaking) to which section 13 of the Industries (Development and Regulation) Act 1951 (65 of 1951), applies, in so far as the expansion relates to production of the same or similar type of goods.

23. Establishment of new under-takings.—(1) No person or authority, other than the Central Government, shall after the commencement of this Act, establish any new undertaking which, when established, would become an interconnected undertaking of an undertaking to which clause (a) of section 21 applies, except under, and in accordance with previous permission of the Central Government :—

Provided that a government, other than the Central Government, may, with the previous permission of the Central Government, establish a new undertaking which,

when established, would become an inter-connected of an undertaking to which clause (a) of section 2 applies.

(2) Any person or authority intending to establish a new undertaking refered to in sub-section (1) shall, before taking any action for the establishment of such undertaking make an application to the Central Government in the prescribed form for that Government's approval to the proposal of establishing any undertaking and shall set out in such application information, with regard to the inter connection, if any, of the new undertaking (which is intended to be established) with every other undertaking, the scheme of finance for the establishment of the new undertaking and such other information as may be prescribed.

(3) (a) The Central Government may call upon the person or authority to satisfy that the proposal to establish a new undertaking or the scheme of finance with regard to such proposal is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and thereupon the Central Government may, if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal.

(b) If the Central Government is of opinion that no such approval as is referred to in clause (a) can be made without further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(c) Upon receipt of the report of the Commission, the Central Government may pass such order with regard to the proposal for the establishment of a new undertaking as it may think fit.

(d) No scheme of finance on the strength of which the establishment of a new undertaking has been approved by the Central Government shall be modified except with the approval of that Government.

24. Merger, amalgamation and take-over.—(1) Notwithstanding anything contained in any other law for the time being in force, no scheme of merger or amalgamation of an undertaking to which this Part applies with any other undertaking or where a scheme of merger or amalgamation proposed between two or more undertakings, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 21 would apply, shall be sanctioned by any court or be recognized for any purpose or be given effect to unless the scheme for such merger or amalgamation has been approved by the Central Government under this Act.

(2) If any undertaking to which this Part applies frames a schme of merger or amalgamation with any other undertaking, or where a scheme of merger or amalgamation is proposal between two or more undertakings, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 21 would apply, it shall before taking any action to give effect to the proposed scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme.

(3) Nothing in sub-section (1) or sub-section (2) shall apply to the scheme of merger or amalgamation between such inter-connected undertakings as are not dominant undertakings and as produce the same goods.

(4) If an undertaking to which this Part applies proposes to acquire by purchase, take over or otherwise the whole or part of an undertaking which will or may result either—

(a) in the creation of an undertaking to which this Part would apply: or

(b) in an undertaking becoming an inter-connected undertaking of an undertaking to which this Part applies, it shall, before giving any effect to its proposals, make an application in writing to the Central Government in the

prescribed form of its intention to make such acquisition, stating therein information regarding its inter-connection with other undertakings, the scheme of finance with regard to the proposed acquisition and such other information as may be prescribed.

(5) No proposal referred to in sub-section (4) which has been approved by the Central Government and no scheme of finance with regard to such proposal shall be modified except with the previous approval of the Central Government.

(6) On receipt of an application under sub-section (2) or sub-section (3), the Central Government may, if it thinks fit, refer the matter to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit report to the Central Government its opinion thereon.

(7) On receipt of the Commission's report the Central Government may pass such order as it may think fit.

(8) Notwithstanding anything contained in any other law for the time being in force, no proposal to acquire by purchase, take-over or otherwise of an under taking to which this Part applies shall be given effect to unless the Central Government has made an order according its approval to the proposal.

(9) Nothing in sub-section (4) shall apply to the acquisition by an undertaking, which is not a dominant undertaking, of another undertaking, if both such undertakings produce the same goods:

Provided that nothing in this sub-section shall apply if as a result of such acquisition an undertaking comes into existence to which clause (*a*) or clause (*b*) of section 21 would apply.

25. Merger, amalgamation or take-over in contravention of law —Where any merger, amalgamation or take-over is being or has been effected in contravention of the provisions of section 24, the Central Government may, after such consultation with the Commission as it may consider

necessary, direct, without prejudice to any penalty which may be imposed under this Act for such contravention, the undertaking concerned to cease and desist from such contravention, to divest itself of the stock or other share capital or assets so acquired and to carry out such further directions as the Central Government may, in all the circumstances of the case, issue.

26. Directors of undertakings not to be appointed directors of competing and banking undertakings.—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no person, who is a director of an undertaking, shall be appointed, after the commencement of this Act, as a director of any other undertaking to which this Part applies or an undertaking engaged in the same line of business or of a banking company except with the prior approval of the Central Government and any appointment contrary to the provisions of this section shall be void:

Provided that the approval of the Central Government shall not be necessary in the case of appointment of directors of undertakings which are not banking companies if the undertakings concerned are inter-connected undertakings.

(2) Notwithstanding anything contained in sub-section (1), no act done by a person as a director shall be invalid merely on the ground that his appointment was void by reason of this section or of any provision of this Part:

Provided that nothing in this section shall be deemed to give validity to any act done by a director after his appointment has been shown to the undertaking and the director concerned to be void.

(3) Notwithstanding anything to the contrary contained in any other law for the time being in force, every director holding such directorship as is not consistent with the provisions of this section shall, unless his appointment expires earlier, obtain within a period of one year from the commencement of this Act, the approval of the Central

Government to such appointment and if he fails to do so his appointment shall, on the expiry of the said period, become void.

(4) The provisions of sub-sections (1), (2) and (3) shall, as far as may be, apply to partners of any firm which is an undertaking within the meaning of this Act, as they apply to directors of companies.

Part B

27. Division of undertakings.—(1) Notwithstanding anything contained in this Act, or in any law for the time being in force, the Central Government may, if it is of opinion that the working of an undertaking to which Part A of this Chapter applies, is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practices, refer the matter to the Commission for an inquiry as to whether it is expedient in the public interest to make an order,—

(*a*) for the division of any trade of the undertaking, or,

(*b*) for the division of any undertaking or interconnected undertakings into such number of undertakings as the circumstances of the case may justify,

and the Commission may after such hearing as it thinks fit, report to the Central Government its opinion thereon.

Explanation.—For the purposes of this section all activities carried on by way of a trade by an undertaking or two or more interconnected undertakings may be treated as a single trade.

(2) If the Commission so recommends, the Central Government may, notwithstanding anything contained in any law for the time being in force, by an order in writing, direct the division of any undertaking or inter-connected undertakings into such number of independent undertakings as that Government may having regard to all the circumstances of the case, consider reasonable.

(3) Notwithstanding anything contained in any other law for the time being in force, the order referred to in sub-section (2) may provide for all such matters as may be necessary to give effect to the division of the undertaking, including,—

(*a*) the transfer or vesting of property, rights, liabilities or obligations;

(*b*) the adjustment of contracts either by the discharge or reduction of any liability or obligation or otherwise;

(*c*) the creation, allotment, surrender or cancellation of any shares, stock or securities;

(*d*) the formation, or winding up of an undertaking or the amencment of the Memorandum, and Articles of Association or any other instruments regulating the business of any undertaking;

(*e*) the extent to which and the circumstances in which provisions of the order affecting an undertaking may be altered by the undertaking and the registration thereof;

(*f*) the continuation, with such changes as may be necessary, of parties to any legal proceeding.

(4) Where the Central Government makes, or intends to make, an order for any purpose mentioned in sub-section (3), it may, with a view to achieving that purpose, prohibit or restrict the doing of anything that might impede the operation or making of the order and may impose on any person such obligations as to the carrying on of any activities or the safeguarding of any assets, as it may think fit, or it may, by order, provide for the carrying on of any activities or safeguarding of any assets either by the appointment of a person to conduct, or supervise the conduct of, any such activities or in any other manner.

28. Matters to be considered by the Central Government before according approval.—In exercising its powers under Part A or Part B of this Chapter, the Central Government or, as the case may be, the Commission, shall take into account all matters which appear in the particular circumstances to be relevant and, among other things, regard shall be had to the need consistently with the general economic position of the country—

(*a*) to achieve the production, supply and distribution, by most efficient and economical means, of goods of such types and qualities, in such volume and at such prices as will best meet the requirements of the defence of India, and home and overseas markets;

(*b*) to have the trade organised in such a way that its efficiency is progressively increased;

(*c*) to ensure the best use and distribution of materials and industrial capacity in India;

(*d*) to effect technical and technological improvements in trade and expansion of existing markets and the opening up of new markets;

(*e*) to encourage new enterprises as a countervailing force to the concentration of economic power to the common detriment;

(*f*) to regulate the control of the material resources of the community to subserve the common good; and

(*g*) to reduce disparities in development between different regions and more especially in relation to areas which have remained markedly backward.

29. Opportunity of being heard.—Before making an order under this Chapter, the Central Government shall give an opportunity to any person who is, or may be, in its opinion, interested in the matter under the consideration of that Government.

CHAPTER IV

MONOPOLISTIC TRADE PRACTICES

30. Investigation by Commission of monopolistic practices.—(1) Where it appears to the Central Government that one or more monopolistic undertakings are indulging in any monopolistic trade practice, or that, monopolistic trade practices prevail in respect of any goods or services, that Government may refer the matter to the Commission for an inquiry and the Commission shall, after such hearing as it thinks fit, report to the Central Government its findings thereon.

(2) If as a result of such inquiry, the Commission makes a finding to the effect that, having regard to the economic conditions prevailing in the country and to all other matters which appear in particular circumstances to be relevant, the trade practice operates or is likely to operate against the public interest, the Central Government may, notwithstanding anything contained in any other law for the time being in force, pass such orders as it may think fit to remedy or prevent any mischiefs which result or may result from such trade practice.

(3) Any order made by the Central Government under this section may include an order—

(*a*) regulating the production, supply, distribution or control of any goods by the undertaking or the control or supply of any service by it and fixing the terms of sale or supply thereof;

(*b*) prohibiting the undertaking from resorting to any act or practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the production, supply or distribution of any goods or provision of any services;

(*c*) fixing standards for the goods used by the undertaking;

(*d*) declaring unlawful, except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;

(*e*) requiring any part to any such agreement as may be so specified or described to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.

31. Monopolistic practice when to be deemed to be prejudicial to public interest.—A monopolistic trade practice shall be deemed to be prejudicial to the public interest if the effect of the trade practice, having regard to the economic conditions prevailing in the country and to all other matters which appear to the Central Government to be relevant in particular circumstances, is or would be—

(*a*) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(*b*) to increase unreasonably—

(*i*) the prices at which goods are sold, or

(*ii*) the profits derived from the production, supply or distribution of the goods or the performance of any service;

(*c*) to reduce or limit unreasonably competition in the production, supply or distribution of any goods (including their sale or purchase) or in the provision of any service;

(*d*) to limit or prevent unreasonably the supply of goods to consumers, or in the provision of any service;

(*e*) to result in a deterioration in the quality of any goods or in the performance of any service.

CHAPTER

REGISTRATION OF AGREEMENTS RELATING TO RESTRICTIVE TRADE PRACTICES

32. Registrable agreements relating to restrictive trade practices.—(1) Any agreement relating to a restrictive trade practice falling within one or more of the following categories shall be subject to registration in accordance with the provisions of this Chapter, namely :—

(*a*) any agreement which restricts, or is likely restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(*b*) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(*c*) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the selleror any other person;

(*d*) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers;

(*e*) any agreement to grant or allow concessions or benefits, including allowances, discount, rebates or credit in connection with, or by reason of, dealings;

(*f*) any agreement to sell goods on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(*g*) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods;

(*h*) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods;

(*i*) any agreement for the unjustifiable exclusion from any trade association of any person carrying on or intending to carry on, in good faith the trade in relation to which the trade association is formed;

(*j*) any agreement to sell goods at unreasonably low prices for the purpose of eliminating competition or a competitor;

(*k*) any agreement not hereinbefore referred to in this section which the Central Government may, by notification in the Official Gazette, specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;

(*l*) any agreement to enforce the carrying out of any such agreement as is referred to in this sub section.

(2) The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with production, supply, distribution or control of goods

(3) No agreement falling within this section shall be subject to registration in accordance with the provisions of this Chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

33. Registrar of restrictive trade agreements.—For maintaining a register of agreements subject to registration under this Act and for performing the other functions imposed on him by this Act, there shall be appointed by the Central Government an officer to be known as the Registrar of Restrictive Trade Agreements.

34. Registration of agreements.—(1) The Central Government shall, by notification in the Official Gazette, specify a day (hereinafter referred to as the appointed day) on and from which every agreement falling within section 32 shall become registrable under this Act:

Provided that different days may be appointed for different categories of agreements.

(2) Within forty-five days from the appointed day, in the case of an agreement existing on that day, and in the case of an agreement made after the appointed day, within forty-five days from the making thereof, there shall be furnished to the Register in respect of every agreement falling within section 32, the following particulars namely.—

(*a*) the names of the persons who are parties to the aggreement; and

(*b*) the whole of the terms of the agreetnent.

(3) If at any time after the agreement has been registered under this section, the agreement is varied (whether in respect of the parties or in respect of the terms thereof) or determined otherwise than by efflux of time, particulars of the variation or determination shall be furnished to the Registrar within one mouth after the date of the variation or determination.

(4) The particulars to be furnished under this section in respect of an agreement shall be furnished —

(*a*) in so far as the agreement or any variation or determination of the agreement is made by an instrument in writing, by the production of the original or a true copy of that agreement; and

(*b*) in so far as the agreement or any variation or determination of the agreement is not so made, by the production of a memorandum in writing signed by the person by whom the particulars are furnished.

(5) The particulars to be furnished under this section shall be furnished by or on behalf of any person who is a party to the agreement or, as the case may be, was a party thereto immediately before its determination, and where the particulars are duly furnished by or on behalf of any such person, the provisions of this section shall be deemed to be complied with on the part of all such persons.

Explanation I—Where any agreement subject to registration under this section relates to the production, supply, distribution or control of goods or the performance of any services in India, and any party to the agreement carries on business in India, the agreement shall be deemed to be an agreement within the meaning of this section, notwithstanding that any other party to the agreement does not carry on business in India.

Explanation II—Where an agreement is made by a trade association, the agreement for the purposes of this section shall be deemed to be made by all persons who are members of the association or represented thereon as if each such person were a party to the agreement.

Explanation III—Where specific recommendations, whether express or implied, are made by or on behalf of a trade association to its members, or to any class of its members, as to the action to be taken or not to be taken by them in relation to any matter affecting the trade conditions of those members, this section shall apply in relation to the agreement for the constitution of the association notwithstanding any provision to the contrary therein as if it contained a term by which each such member and any person represented on the association by any such member agreed with the association to comply with those recommendations and any subsequent recommendations affecting these recommendations.

35. Keeping the register. (1)—For the purposes of this Act, the Registrar shall keep a register in the prescribed form and shall enter therein the prescribed particulars as regards agreements subject to registration.

(2) The Registrar shall provide for the maintenance of a special section of the register for the entry or filing in that section of such particulars as the Commission may direct, being—

(*a*) particulars containing information, the publication of which would, in the opinion of the Commission, be contrary to the public interest;

(*b*) particulars containing information as to any matter, being information the publication of which, in the opinion of the Commission, would substantially damage the legitimate business interests of any person.

(3) Any party to an agreement required to be registered under section 34 may apply to the Registrar—

(*i*) for the agreement or any part of the agreement to be excluded from the provisions of this Chapter relating to the registration on the ground that the agreement or part thereof has no substantial economic significance, or

(*ii*) for inclusion of any provision of the agreement in the special section,

and the Registrar shall dispose of the matter in conformity with any general or special directions issued by the Commission in this behalf.

CHAPTER VI

CONTROL OF CERTAIN RESTRICTIVE TRADE PRACTICES

36. Investigation into restrictive trade practices by Commission—(1) The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under section 34 or not, which may come before it for inquiry and, if, after such enquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that—

(*a*) the practice shall be discontinued or shall not be repeated;

(*b*) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

(2) The Commission may, instead of making any order under this section, permit the party to any restrictive trade practice, if he so applies, to take such steps within the time specified in this behalf by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest, and, in any such case, if the Commission is satisfied that the necessary steps have been taken within the time specified, it may decide not to make any order under this section in respect of of that trade practice.

(3) No order shall be made under sub-section (1) in respect of—

(*a*) any agreement between buyers relating to goods which are bought by the buyers for consumption and not for ultimate re-sale whether in the same or different form, type or specie or as constituent of some other goods ;

(*b*) a trade practice which is expressly authorised by any law for the time being in force.

(4) Notwithstanding anything contained in this Act, if the Commission, during the course of an inquiry under sub-section (1), finds that a monopolistic undertaking is indulging in restrictive trade practices, it may, after passing such orders under sub-section (1) or sub-section (2) with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government may take under section 30.

37. Trade practices when deemed to be prejudicial to public interest.—A restrictive trade practice shall be deemed to be prejudical to the public interest if, in the opinion of

the Commission, the effect of the practice, having regard to the economic conditions prevailing in the country and to all other matters which appear to the Commission to be relevant in particular circumstances, is or would be—

(*a*) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(*b*) to increase unresonably—

(*i*) the prices at which goods are sold, or

(*ii*) the profits derived from the production, supply or distribution of the goods or from the performance of any service;

(*c*) to reduce or limit unreasonable competition in production, supply or distribution of any goods (including their sale or purchase) or in the provision of any service;

(*d*) to limit or prevent unreasonably the supply of goods to consumers, or in the provision of any service;

(*e*) to result in a deterioration in the quality of any goods or in the performance of any service.

38. **Special conditions for avoidance of conditions for maintaining re-sale prices** — (1) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and a wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the re-sale of goods in india.

(2) After the commencement of this Act, no supplier of goods whether directly or through any person or association of persons acting on his behalf shall notify to dealers or

otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the re-sale of the goods in India.

(3) This section shall apply to patented articles (including articles made by a patented process) as it applies to other goods and notice of any term or condition which is void by virtue of this section or which would be so void if included in a contract of sale or agreement relating to the sale of such article shall be of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent:

Provided that nothing in this section shall affect the validity as between the parties and their successors, of any term or condition of a licence granted by the proprietor of a patent or by a licensee under any such licence or of any assignment of a patent, so far as it regulates the price at which articles produced or processed by the licensee or the assignee may be sold by him.

Explanation.—In this section and in section 39, the term "supplier", in relation to supply of any goods, means a person who supplies goods to any person for the ultimate purpose of re sale and includes a wholesaler, and the term "dealer" includes a supplier and a retailer.

39. Prohibition of other measures for maintaining re-sale prices.—(1) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, no supplier shall withhold supplies of any goods from any wholesaler or retailer seeking to obtain them for re-sale in India on the ground that the wholesaler or retailer—

(*a*) has sold in India at a price below re-sale price, goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or

(*b*) is likely if the goods are supplied to him to sell them in India at a price below that price or supply them, either directly or indirectly, to a third party who would be likely to do so.

(2) Nothing contained in sub-section (1) shall render it unlawful for a supplier to withhold supplies of goods from any wholesaler or retailer or to cause or procure another supplier to do so if he has reasonable cause to believe that the wholesaler or the retailer, as the case may be, has been using as loss leaders any goods of the same or a similar description whether obtained from that supplier or not.

(2) A supplier of goods shall be deemed to be withholding supplies of goods from a dealer if he—

(*a*) refuses or fails to supply those goods to the order of the dealer;

(*b*) refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters which are less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

(*c*) treats a dealer in spite of a contract with such dealer for the supply of goods, in a manner less favourable than that in which he normally treats other dealers in respect of time or methods of delivery or other matters arising in the performance of the contract.

(4) A supplier shall not be deemed to be withholding supplies of goods on any of the grounds mentioned in sub-section (1), if, in addition to that ground, he has any other ground, which alone would entitle him to withhold such supplies.

Explanation I.—"Re-sale price", in relation to sale of goods of any description, means any price notified to the dealer or otherwise published by or on behalf of the supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on, or is recommended as appropriate for, a sale of that description or any price

prescribed or purporting to be prescribed for that purpose by any contract or agreement between the wholesaler or retailer and any such supplier.

Explanation II.—A wholesaler or retailer is said to use goods as loss leaders when he re-sells them otherwise than in a genuine seasonal or clearance sale not for the purpose of making a profit on the re-sale but for the purpose of attracting to the establishment at which the goods are sold, customers likely to purchase other goods or otherwise for the purpose of advertising his business.

40. Power of Commission to exempt particular classes of goods from sections 38 and 39.—(1) The Commission may, on a reference made to it by the Registrar or any other person interested, by order, direct that goods of any class specified in the order shall be exempt from the operation of sections 38 and 39 if the Commission is satisfied that in default of a system of maintained minimum re-sale prices applicable to those goods—

(*a*) the quality of goods available for sale or the varieties of goods so available would be substantially reduced to the detriment of the public as consumers or users of those goods, or

(*b*) the prices at which the goods are sold by retail to be in general and in the long run be increased to the detriment of the public as such consumers or users, or

(*c*) any necessary services actually provided in connection with or after the sale of the goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as such consumers or users.

(2) On a reference under this section in respect of goods of any class which have been the subject of proceedings before the Commission under section 30, the Commission may treat as conclusive any evidence of fact made in those proceedings.

CHAPTER VII

POWER TO OBTAIN INFORMATION AND APPOINT INSPECTORS

41. Power of Registrar to obtain information.—(1) If the Registrar has reasonable cause to believe that any person is a party to an agreement subject to registration under section 34. he may give notice to that person requiring him within such time, not less than thirty days, as may be specified in the notice, to notify to the Registrar whether he is a party to any such agreement and, if so, to furnish to the Registrar such particulars of the agreement as may be specified in the requisition.

(2) The Registrar may give notice to any person by whom particulars are furnished under section 34 in respect of an agreement or to any other person being a party to the agreement requiring him to furnish to the Registrar such further documents or information in his possession or control as the Registrar may consider expedient for the purpose of, or in connection with, the registration of the agreement.

(3) Where a notice under this section is given to a trade association, the notice may be Given to the secretary, manager or other similar officer of the association and for the purposes of this section any such association shall be treated as a party to an agreement to which members of the association, or persons represented on the association by those members, are parties as such.

(4) If the particulars called for under sub-section (1) or sub-section (2) are not furnished, the Commission may, on the application of the Registrar,—

(*a*) order the person or, as the case may be, the association to furnish those particulars to the Registrar within such time as may be specified in the order, or

(*b*) authorise the Registrar to treat the particulars contained in any document or information in

his possession as the particulars relating to the agreement, or

(*c*) in case the Commission is satisfied that the failure to furnish the particulars is wilful, make an order restraining wholly or partly the parties to the agreement from acting on such agreement and from making any other agreement to the like effect.

42. Duty of undertaking to furnish information.—The Central Government may, by a general or special order, call upon any undertaking to furnish to that Government periodically or as and when required any information concerning the activities carried on by the undertaking, the connection between it and any other undertaking including such other information relating to its organisation, business, cost of production, conduct, trade practice or management, as may be prescribed to enable that Government to carry out the purposes of this Act.

43. Power to appoint inspectors.—(1) The Central Government may, if it is of opinion that there are circumstances suggesting that an undertaking is indulging in any monopolistic or restrictive trade practice or is, in any way, trying to acquire any control over any dominant or inter connected undertaking, appoint one or more inspectors for making an investigation into the affairs of the undertaking.

(2) The provisions of section 240 and section 240A of the Companies Act, 1956, (1 of 1956), so far as may be, shall apply to an investigation made by an inspector appointed under this section as they apply to an investigation made by the inspector appointed under that Act.

CHAPTER VIII

OFFENCES AND PENALTIES

44. Penalty for contravention of section 22.—If any person contravenes the provisions of section 22 or any order made thereunder, he shall be punishable with fine which may extend to rupees one lakh.

45. Penalty for contravention of section 23 or section 24 or section 25 or section 27.—If any person contravenes provisions of section 23 or section 24 or section 25 or section 27 he shall be punishable with fine which may extend to rupees one lakh, and where the offence is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

46. Penalty for contravention of section 26.—If any person contravenes, without any reasonable excuse, the provisions of section 26, he shall be punishable with fine which may extend to two thousand rupees, and where the offence is a continuing one, with a further fine which may extend to two hundred rupees for every day, after the first, during which such contravention continues.

47. Penalty for failure to register agreements.—If any person fails, without reasonable excuse, to register an agreement which is subject to registration under this Act, he shall be punishable with fine which any extend to five thousand rupees and where the offence is a continuing one with a further fine which may extend to five hundred rupees for every day, after the first, during which such failure continues.

48. Penalty for offences in relation to furnishing of information.—(1) If any person fails, without reasonable cause, to furnish any information required under section 42 or to comply with any notice duly given to him under section 41, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to one hundred rupees for every day after the first, during which such failure continues.

(2) If any person, who furnishes or is required to furnish any particulars, documents or any information—

(*a*) makes any statement or furnishes any documents which he knows or has reason to believe to be false in any material particular ; or

(*b*) omits to state any material fact knowing it to be material; or

(*c*) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

49. Penalty for offences in relation to orders under the Act.—If any person contravenes any order made under section 13 or section 30 or section 36, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first, during which such contravention continues.

50. Penalty for offences in relation to re-sale price maintenance.—If any person contravenes the provisions of section 38 or section 39, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

51. Penalty for wrongful disclosure of information.—If any person discloses an information in contravention of section 59, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

52. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation — For the purpose of this section—

(*a*) "company" means a body corporate and includes a firm or other association of individuals; and

(*b*) "director" in relation to a firm, means a partner in the firm.

CHAPTER IX

MISCELLANEOUS

53. Power of Central Government to impose conditions, limitations and restrictions on approvals, etc., given under the Act.—(1) The Central Government may, while—

(*a*) according any approval, sanction, permission, confirmation or recognition, or

(*b*) giving any direction or issuing any order, or

(*c*) granting any exemption,

under this Act in relation to any matter, impose such conditions, limitations or restrictions as it may think fit.

(2) The Central Government shall have the power to modify any scheme of finance submitted to it under this Act in such manner as it thinks fit.

(3) If any condition, limitation or restriction imposed by the Central Government under sub-section (1) is contravened, the Central Government may rescind or withdraw the approval, sanction, permission, confirmation, recognition, direction, order or exemption made or granted by it.

54. Appeals.—Any person aggrieved by any order made by the Central Government under Chapter III or Chapter IV, or as the case may be, of the Commission under section 13 or section 36, may, within sixty days from the date of the order, prefer an appeal to the Supreme Court on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908).

55. Jurisdiction of courts to try offences.—No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

56. Cognizance of offences.—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860).

57. Magistrates' power to impose enhanced penalties.—Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, (5 of 1898) it shall be lawful for any Presidency Magistrate or any Magistrate of the first class to pass any sentence authorised by this Act in excess of his powers under section 32 of the said Code.

58. Protection regarding statement made to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statements:

Provided that the statement—

(*a*) is made in repect to a question which he is required by the Commission to answer ; and

(*b*) is relevant to the subject-matter of the inquiry.

59. **Restriction on disclosure of information.**—(1) No information relating to any undertaking, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the owner for the time being of the under taking, be disclosed otherwise than in compliance with or for the purposes of this Act.

(2) Nothing contained in sub-section (1) shall apply to a disclosure of an information made for the purpose of any legal proceeding pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this act or otherwise, or for the purposes of any report relating to any such proceeding.

60. Power of the Central Government to require the Commission to submit a report.—The Central Government may at any time require the Commission to submit to it a report on the general effect on the public interest of such trade practices as, in the opinion of that Government, either constitute or contribute to monopolistic or restrictive trade practices or concentration of economic power to the common detriment.

61. Reports of the Commission to be placed before Parliament.—The Central Government shall cause to be laid before both Houses of Parliament an annual report and such special report pertaining to the execution of this Act which may be submitted to it by the Commission from time to time.

62. Members to be public servants.—Every member of the Commission, the Director and the Registrar and every member of the staff of the Commission, the Director and the Registrar, shall be deemed, while acting or purporting to

act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

63. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceedings shall lie against the Commission or any member, officer or servants of the Commission, the Director, the Registrar or any member of the staff of the Director or the Registrar in respect of anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil court against the Central Government or any officer or employee of that Government for any damage caused by anything done under, or in pursuance of any provisions of, this Act.

64. Inspection of, and extracts from, the register.—(1) The register, other than the special section, shall be open to public inspection during such hours and subject to the payment of such fees, not exceeding rupees twenty-five, as may be prescribed.

(2) Any person may upon the payment of such fee, not exceeding rupee one, for every one hundred words, as may be prescribed, require the Registrar to supply to him a copy of, or extract from, any particulars entered or filed in the register, other than the special section, certified by the Registrar to be a true copy or extract.

(3) A copy of, or extract from, any document entered or filed in the register certified under the hand of the Registrar or any officer authorised to act in this behalf shall, in all legal proceedings, be admissible in evidence as of equal validity with the original.

65. Power to make regulations.—(1) The Commission may make regulations for the efficient performance of sit functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters namely :—

(*a*) the conditions of service, as approved by the Central Government, of persons appointed by the Commission ;

(*b*) the issue of the processes to Government and to other persons and the manner in which they may be served ;

(*c*) the manner in which the special section of the register shall be maintained and the particulars to be entered or filed therein ;

(*d*) the duties and functions of the Registrar and the Director ;

(*e*) the payment of costs of any proceedings before the Commission by the parties concerned and the general procedure and conduct of the business of the Commission ;

(*f*) any other matter for which regulations are required to be, or may be, made under this Act.

66. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the form and manner in which notices may be given or applications may be made to it under this Act and the fees payable therefor ;

(*b*) the particulars to be furnished under this Act and the form and manner in which and the intervals within which they may be furnished ;

(*c*) the conditions of service of members of the Commission and the Registrar ;

(*d*) the places and the manner in which the register shall be maintained by the Registrar and the particulars to be entered therein;

(*e*) the fees payable for inspection of the register and for obtaining certified copies of particulars from the register;

(*f*) the travelling and other expenses payable to persons summoned by the Commission to appear before it;

(*g*) the criterion to be adopted for determining the circumstances in which conditions or matters enumerated in sections 22, 24 and 25 shall be considered to exist;

(*h*) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Bill is designed to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment and to prohibit such monopolistic and restrictive trade practices as are prejudicial to public interest.

2. It is in pursuance of the recommendations made by the Monopolies Inquiry Commission in their report submitted to the Government on the 31st October, 1965, and the resolution dated the 5th September, 1966, containing Government decisions thereon laid before both Houses of Parliament on the 6th September, 1966. The structure of the Bill basically remains the same as recommended by the Monopolies Inquiry Commission. Certain modifications have been introduced in accordance with the terms of the Government Resolution dated the 5th September, 1966, in so far as the powers of the proposed Monopolies and Restrictive Trade Practices Commission are concerned. Certain other modifications introduced, include provisions for comprehensive control over undertakings which along with other inter-connected undertakings under the control of the same persons or groups command assets of Rs. 20 crores or more in order to more effectively control concentration of economic power.

3. The proposed Commission is sought to be vested with mandatory powers in regard to cases of restrictive trade practices and advisory powers in respect of cases concerning monopolistic practices and concentration of economic power. In respect of the latter category of cases, the final decision would lie with the Government.

4. The main provisions of the Bill fall under the following heads:—

(*i*) Regulating expansions, mergers and amalgamations and appointment of directors in respect of "dominant undertaking" having assets of Rs. one crore and more and of undertakings which by themselves or with inter-connected undertakings have assets of not less than Rs. 20 crores in value.

(*ii*) Regulating the starting of new undertakings which would become inter-connected undertakings of such existing undertakings the total assets of which exceed Rs. 20 crores.

(*iii*) Control over and prohibition of monopolistic and restrictive trade practices as are found to be prejudicial to public interest.

The Notes on clauses explain briefly the reasons for the various provisions in the Bill.

FAKHRUDDIN ALI AHMED.

NEW DELHI;

The 14th August, 1967.

Notes on Clauses

Clause 2 (*a*): "Agreement". The definition is based on the one given by the Monopolies Inquiry Commission in clause 2 of the draft Bill.

(*d*) "Dominant undertaking". The definition given by the Monopolies Inquiry Commission in sub-clause (iv) of clause 2 of the draft Bill has been amplified by covering cases of "control" as well.

Explanations II and III have been added to enable the Government to lay down criterion or combination of criteria for determining control over production, supply or distribution in respect of particular form of goods.

(*g*) "Inter-connected undertakings". The definition given by the Monopolies Inquiry Commission in sub-clause (vi) of clause 2 of the draft Bill has been amplified by including cases of inter-connections between firms and companies.

(*i*) "Monopolistic practice". The definition is based on clause 18 of the Monopolies Inquiry Commission draft Bill.

(*j*) "Monopolistic undertaking". The definition as given by the Monopolies Inquiry Commission in clause 17

of their draft Bill has been enlarged to include cases where more than two undertakings jointly indulge in monopolistic practices.

(*o*) "Restrictive trade practice". The definition is based on clause 20 of the draft Bill submitted by the Monopolies Inquiry Commission.

(*s*) "Trade". The definition given by the Monopolies Inquiry Commission in sub-clause (*xiv*) of clause 2 of the draft Bill, covering cases of production of goods, has been amplified to cover cases of "control" of goods and to include the provision of any services.

(*v*) "Undertaking". The definition given by the Monopolies Inquiry Commission in sub-clause (*xvii*) of clause 2 of the draft Bill has been amplified to include cases of undertakings owned by charitable, religious or public trusts.

Clause 3 based on Monopolies Inquiry Commission draft, is designed to give exemption to Government companies, statutory corporations, trade unions and such undertakings the control of which has been taken over by the Central Government.

Clause 5.—The Monopolistic and Restrictive Trade Practices Commission would consist of a minimum of three and maximum of nine members, including the Chairman. The Chairman of the Commission has to be a person, who is, has been, or is qualified to be, a judge of the Supreme Court or of a High Court.

Clause 6.—The members of the Commission will hold office for a term not exceeding 5 years. While they will be eligible for reappointment, they would not be entitled to hold any appointment in any other undertaking for a period of 5 years after ceasing to hold office as members of the Commission..

Clause 7 dealing with removal of members from office is based on clause 7 of the draft Bill submitted by the Monopolies Inquiry Commission.

Clause 8 provides for appointment of a Director of Investigation and the other staff of the Commission by the Central Government.

Clause 9 provides that the expenditure on the functioning of Commission shall be defrayed out of the Consolidated Fund of India.

Clause 10 deals with cognizance by the Commission of cases relating to monopolistic and restrictive trade practices. Regarding the former, a reference has necessarily to come from the Central Government, for enquiry and report.

Clause 11 provides for preliminary screening of cases by the Director of Investigation for satisfying the Commission that the complaint requires to be enquired into.

Clause 12 confers powers of a Civil Court on the Commission.

Clause 13 empowers the Commission to issue ancillary directions to ensure proper implementation of its orders.

Clause 14 deals with cases where a party to a monopolistic or restrictive trade practice does not carry on business in India. In such cases the order may relate to only that part of the practice, which is carried on in India.

Clause 15 protects certain rights relating to patents granted in India and export of goods from India.

Clause 16 provides for sittings of the Commission and the formation of Benches.

Clause 17.—The hearings of the Commission would be in public, except in cases where the Commission is satisfied that it is desirable to hold sittings incamera.

Clause 18 empowers the Commission to regulate its procedure.

Clause 19 is designed to ensure expeditious disposal of cases by the Commission.

Clause 20 provides for the registration of orders of the Commission by the Registrar of Restrictive Trade Agreements.

Clause 21 restricts the application of the chapter on Concentration of Economic Power to (*i*) an undertaking or a group of inter-connected undertakings having assets of not less than 20 crores of rupees in value and (*ii*) dominant undertakings having assets of not less than one crore of rupees in value.

Clause 22 requires approval of the Central Government to an expansion, which results in 25% increase :—

(*a*) in production, supply, distribution or control of any goods or the provision of any services in the case of a 'dominant undertakings', having assets of not less than rupees one crore ;

(*b*) or even in assets of an undertaking or undertakings belonging to a group of inter-connected undertakings having assets of not less than 20 crores of rupees.

This clause also empowers the Central Government to look into the proposed scheme of finance.

Clause 23 necessitates prior approval of the Central Government for establishment by a person of a new undertaking, which would become an inter-connected undertaking of an under taking which along with inter-connected undertakings has assets of not less than rupees 20 crores.

This clause also empowers the Government to look into the proposed scheme of finance.

Clause 24 necessitates prior approval of the Central Government to schemes of mergers, amalgamations and take-overs, resorted to by undertakings mentioned in clause 21. The clause also covers such cases of mergers, amalgamations and take-overs as result in formation of undertakings to which clause 21 applies.

Clause 25 provides for remedial measures in respect of mergers, amalgamations and take-overs effected in contravention of the law.

Clause 26 requires prior approval of the Central Government for appointment of directors of undertakings covered by clause 21 in competing and banking undertakings. A period of one year has been provided for regularising existing appointments.

Clause 27 provides for division of such inter-connected undertakings whose working is found by the Commission to be prejudicial to public interest.

Clause 28 specifies the matters to be considered by the Central Government while according its approval in respect of cases covered by the chapter on Concentration of Economic Power.

Clause 29 provides for opportunity to the interested persons to be heard.

Clause 30 enables the Government to refer cases of monopolistic practices to the Commission for enquiry and report. It empowers the Government to pass suitable orders in cases the Commission reports that the particular monopolistic practice operates against public interest.

Clause 31 lays down the conditions under which the monopolistic practices are deemed to be prejudicial to public interest.

Clause 32 specifies the categories of agreements which require to be registered.

Clause 33 provides for appointment of a Registrar of Restrictive Trade Agreements for the purpose.

Clause 34 lays down a period of 45 days within which registrable agreements are required to be registered, giving the prescribed particulars.

Clause 35 provides for maintenance of a register of restrictive trade agreements. It also empowers the Registrar to provide for the maintenance of a special section of the register for recording therein such particulars as the Commission may direct.

Clause 36 is the main operative clause empowering the Commission to inquire into restrictive trade practice, whether the agreement relating thereto has been registered or not and issue, *inter alia*, cease and desist orders.

Clause 37 specifies the circumstances in which restrictive trade practices shall be deemed to be prejudicial to public interest.

Clause 38 to 40 deal with re-sale price maintenance.

Clause 38 declares re-sale price agreements to be void and prohibits notification of minimum prices for re-sale by the suppliers of goods.

Clause 39 forbids the supplier from withholding supplies on the ground that the whole-seller or retailer has not or is not likely to abide by the re-sale price conditions.

Clause 40 empowers the Commission to exempt particular classes of goods from operation of clause 38 and 39.

Clause 41 empowers the Registrar to obtain information regarding agreements relating to restrictive trade practices.

Clause 42 empowers the Central Government to call for such information from the various undertakings as may be necessary for it to carry out the purposes of the Act.

Clause 43 empowers the Central Government to appoint Inspectors for making an investigation into the affairs of an undertaking indulging in monopolistic or restrictive trade practice or trying to acquire control over dominant or inter-connected undertakings.

Clause 44 to 51 provide for penalties for various offences under the Act.

Clause 52 fixes the responsibility in case of offences by the company on its various officers.

Clause 53 empowers the Central Government to impose conditions, limitations and restrictions while according approval under the Act.

Clause 54 provides for right of appeals to the Supreme Court on questions of law.

Clause 55 indicates the courts competent to try offences under the Act.

Clause 56 makes the offences under the Act non-cognizable.

Clause 57 empowers the Presidency Magistrates and Magistrates 1st Class to pass sentences in exercise of their powers under the Code of Criminal Procedure.

Clause 58 provides that evidence given before the Commission shall not be used against the witness.

Clause 59 provides that information relating to an undertaking obtained by the Commission shall not be disclosed except with the previous permission of the owner of the undertaking.

Clause 60 empowers the Central Government to call for reports of the Commission on general matters concerning the Act.

Clause 61 calls for an annual report of the Commission to be laid before both the Houses of Parliament.

Clause 62 declares members and the staff of the Commission to be public servants.

Clause 63 protects the acts of the members and the staff of the Commission done in good faith.

Clause 64 provides for inspection of and taking extracts from the register of restrictive trade practices.

Clause 65 empowers the Commission to make regulations for the efficient performance of its functions.

Clause 66 empowers the Central Government to make rules to carry out the purposes of the Act.

FINANCIAL MEMORANDUM

The Monopolies Inquiry Commission recommended, *inter alia*, that a permanent statutory body should be set up to keep a constant watch on the consequences of concentration of economic power, and to deal with monopolistic and restrictive trade practices. The Bill seeks to implement this recommendation with a view to providing that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies and the prohibition of monopolistic and restrictive trade practices when found contrary to the public interest and for matters connected therewith or incidental thereto.

2. Clause 5 of the Bill envisages establishment of the Monopolies and Restrictive Trade Practices Commission. It is estimated that the annual expenditure on the Commission will be as indicated below :—

		Rs.
Remuneration of members and staff	....	10,78,500
Travelling Allowance	....	50,000
Other Charges	....	1,60,000
TOTAL	....	12,88,500

3. Clauses 11, 12, 14, 17 and 18 of the proposed Bill seek to vest new powers in the Central Government, regarding granting of approval to proposals for expansion of dominant undertakings, proposals for merger or amalgamation of certain undertakings and appointment of a director of a dominant undertaking as a director of another undertaking engaged in the same line of business, not being an inter-connected undertaking and examination of cases of monopolistic practices and reference of the same, where necessary, to the Monopolies and Restrictive Trade Practices Commission apart from making of general references under clause 18 of the Bill. Accordingly, it

would be necessary to appoint additional staff in the Department to attend to this new work. The anticipated annual expenditure on this account is indicated below :—

		Rs.
Remuneration of additional staff	....	2,87,500
Travelling Allowance	....	7,500
Other Charges	....	40,000
TOTAL	....	3,35,300

4. Clause 23 provides that the Central Government shall appoint an officer to be known as the Registrar of Restrictive Trade Agreements for maintaining a register of agreements, subject to registration and for performing other functions imposed on him. Registrar will have under him also officers and staff in the important regions of the country. The estimated annual expenditure on this account is indicated below :—

		Rs.
Remuneration of Officers and staff	....	4,60,000
Travelling Allowance	....	20,000
Other Charges	...	80,000
TOTAL	...	5,60,000

5. The total estimated annual expenditure that would be required to be met out of the Consolidated Fund of India if the Bill is passed into law would, therefore, be Rs. 21,83,800.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 66 of the Bill empowers the Central Government to make rules to carry out the purposes of the Bill. The matters in respect of which rules may be made relate, *inter alia*, to the form and manner in which notices may be given or

application may be made to the Central Government under the Bill and the fees payable therefor; the particulars which are required to be furnished under the Bill and the form and manner in which they are to be furnished; the conditions of service of the members of the Commission and the staff thereof; the places and manner in which register shall be maintained by the Registrar and the particulars to be entered therein and the fees payable for inspection of the register and for obtaining certified copies of extracts therefrom; the travelling and other expenses payable to persons summoned by the commission to appear before it. These matters pertain to procedure or detail necessary for the effective administration of the provisions of the Bill and as such the delegation of legislative power is of a normal character.

Clause 65 of the Bill empowers the Commission to make regulations for the efficient performance of its functions under the Bill. The matters in respect of which regulations may be made by the Commission relate, *inter alia*, to the issue of processes to Government and to other persons and the manner in which they may be served; the manner in which special section of the register shall be maintained and the particulars to be entered or filed therein; the duties and functions of the Registrar and the Director; the payment of costs of any proceedings before the Commission by the parties concerned and the general procedure and conduct of the business of the Commission. These matters also pertain to procedure or detail necessary for the effective functioning of the Commission and as such the delegation of legislative power is of a normal character.

B. N. BANERJEE,
Secretary.

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, Shillong